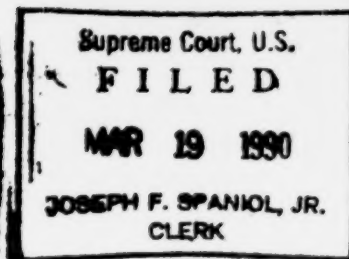


89-2002

No. A-524



In The
Supreme Court of the United States
October Term, 1989

JOE A. GAMEZ,

Petitioner,

vs.

THE STATE BAR OF TEXAS, ET AL

Respondents.

**Petition For Writ Of Certiorari To The
Supreme Court Of Texas And
The Court Of Appeals Fourth Supreme
Judicial District Of Texas, San Antonio**

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QUESTIONS PRESENTED FOR REVIEW

- (1) Was petitioner denied due process by refusal of the Appellate and Supreme Courts of the State of Texas to apply established law which requires a judgment rendered void by the Appellate Court's reversal of one count because the punishment was not apportioned as to each count to be remanded to the trial court for reassessment of the punishment between the remaining counts.
- (2) May a state legislature confer legislative and executive powers to the judicial branch of the government without violating the separation of powers provisions of the Texas and United States Constitutions?
- (3) May the Supreme Court of Texas promulgate rules and hear appeals regulating and disciplining attorneys while at the same time enforcing said rules through the State Bar of Texas, the administrative agency of said Court, without violating the separation of powers provisions of the Texas and United States Constitutions?
- (4) Under such a lawyer-disciplinary system, can an accused attorney be guaranteed procedural as well as substantive due process under the Texas and United States Constitution?
- (5) Is an accused attorney able to receive a fair trial either by a jury or by a judge, when there is no provision in such a system to supersede the judgment pending an appeal on the merits?
- (6) May the highest Court of the State under such a system refuse to hear an appeal involving attorney discipline without violating the Texas and United States Constitution?

- (7) May the Appellate Court and the State Bar of Texas refuse to follow the Disciplinary Rules and if they do, under such a system as exists, can the accused attorney obtain justice without having to appeal to the United States Supreme Court?

PARTIES

Joe A. Gamez, Petitioner, was the Respondent, Appellant and the Relator in the respective Courts below. Plaintiff and Appellee below was the State Bar of Texas. The Court of Appeals, Fourth Supreme Judicial District of Texas, San Antonio was the Respondent to Petitioner's final recourse — application for Writ Of Mandamus. **Even though the Petitioner has already served his punishment, this petition is filed to challenge and change an unconstitutional procedure, to protect his future rights of appeal and to restore his reputation in the legal fraternity.**

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In The
Supreme Court of the United States
October Term, 1989

JOE A. GAMEZ,

Petitioner,

vs.

THE STATE BAR OF TEXAS, et al,

Respondents.

**Petition For Writ Of Certiorari To The
Supreme Court Of Texas And
The Court Of Appeals, Fourth Supreme
Judicial District Of Texas, San Antonio**

The Petitioner, JOE A. GAMEZ, respectfully prays that a Writ of Certiorari be issued to review the judgment and opinion of the Court of Appeals Fourth Supreme Judicial District of Texas, San Antonio entered in this proceeding on December 28, 1988, and the denial by the Supreme Court of Texas of attacks thereto, including the Request for a Writ of Mandamus on October 16, 1989.

OPINION BELOW

The judgment and opinion of the Court of Appeals, Fourth

Supreme Judicial District of Texas, San Antonio, Appeal No. 04-88-00367-CV, reversing in part the judgment of the trial court in Cause No. 86-CI-07087, and including the dissenting opinion by Carlos C. Cadena, the Chief Justice. These and part of Motion For Rehearing, Brief For Petitioner And Response To Repondent's Reply on Application for Writ of Error, in Supreme Court of Texas, Cause No. C-8059, and the order from the Supreme Court of Texas denying application for Writ of Mandamus are included in the appendix. Petitioner's Motion For Rehearing; Motion For Leave To File Writ Of Mandamus and Request For Ancilliary Relief, Cause No. C-8146; Order of the Supreme Court; Letter and Order of the Supreme Court, informing Petitioner of denial to Motion For Rehearing; Petitioner's second Motion For Leave and Petition For Writ of Mandamus, Cause No. C-9077; Petitioner's Motion For Extraordinary Relief and For Consolidation of three cases (C-8509, C-9076, and C-9077) are part of the record not included in the appendix.

JURISDICTION

The last order denying relief by the Supreme Court of Texas was on October 18, 1989. This Petition for Writ of Certiorari is filed within the sixty day extension of time granted by the United States Supreme Court Associate Justice Byron R. White. 28 U.S.C., Section 1257 authorizes jurisdiction of this Honorable Court because the state court has decided a due process question in a way that conflicts with applicable decisions of this court.

STATEMENT OF CASE

Petitioner, Joe A. Gamez, was accused in 1983 of three charges of professional misconduct, occurring in the years

1980 and 1981. At the time, he was a candidate for State Representative. Petitioner refused an offer of 3 years suspension because he held then, as he does now, that the charges were groundless.

Cause No. 86-CI-07087 was initiated on April 23, 1986. A jury trial was held on April 11-13, 1988, in the 57th District Court of Bexar County, Texas, before the Honorable James F. Clawson, Jr., not a regular judge of Bexar County. On April 15, 1988, he signed the Final Order (Appendix I).

On November 15, 1988, Petitioner was granted an injunction, (Cause No. 04-88-00587-CV), against the State Bar of Texas, its officers, agents and employees staying suspension of Petitioner's license pending the disposition of the appeal on the merits. The original proceeding sought to preserve subject matter jurisdiction.

On November 18, 1988, the State Bar was granted its motion to set aside the injunction. Appellant sought his first Writ of Mandamus from the Texas Supreme Court, in Joe A. Gamez v. The Honorable Carlos C. Cadena, Chief Justice, Cause No. C-8146, in a further attempt to preserve subject matter jurisdiction. It was denied on December 14, 1988. The Fourth Court of Appeals delivered its opinion on December 28, 1988. The Appellant filed a Motion For Rehearing on January 12, 1989, and an Amended Motion for Rehearing on the same opinion was filed on January 24, 1989. On February 14, 1989, the Fourth Court of Appeals refused to grant a Rehearing and on March 16, 1989, Petitioner filed an Application For a Writ of Error with the Texas Supreme Court. On June 21, 1989, the Supreme Court of Texas denied the Application For Writ.

On July 6, 1989, A Motion For Rehearing, Brief For Petitioner And Response To Respondent's Reply on Application for Writ of Error was filed. Part thereof (Points of Error one and two, p. 3-6), are included in Appendix III, to show that the failure to apply established law was a denial of due process presented to the Supreme Court of Texas. It was denied on September 13, 1989.

Appellant filed a second petition for Writ of Mandamus

on September 20, 1989. The Court refused to hear it on October 18, 1989.

On September 29, 1989, Petitioner filed a Motion with the Texas Supreme Court requesting Extraordinary Relief and to consolidate his request for a second Writ of Mandamus, Cause No. C-9077 with his Motion to Reconsider, and to consolidate Cause No. C-8509, on the Writ of Error, with another attorney's petition for Writ of Mandamus, Cause No. C-9076, Jose F. Olivares v. Honorable Joe E. Kelly (Retired) Administrative Judge, et al, in the interest of judicial economy since all cases involve constitutional issues of separation of powers, equal protection of law and the blatant denial of procedural and substantive due process which is guaranteed to every citizen of the United States under both the United States and the Texas Constitutions.

This Application for a Writ of Certiorari is based on:

- a) refusal of the Supreme Court of Texas to consider the denial of due process and equal protection of the law in the application for Writ of Error (Cause No. C-8509); and
- b) denial of the petition for Writ of Mandamus (Cause No. C-9077), to remove the judgment made void by state law and by the denial of due process.

Under Article 10, Section 18 of the State Bar Rules, if "an accused attorney" refuses to accept the punishment recommended by the "State Bar Grievance Committee" regardless of the validity of the complaints, he is automatically subjected to "a public reprimand, suspension or disbarment."

Upon turning down the arbitrary offer, Petitioner was subjected to the court action in Cause No. 86-CI-07087.

Moreover, if the attorney loses, under Article 10, Section 24, there is a theoretical right of appeal, which is hallow because no supersedeas bond is available, and irreparable harm is suffered even if the judgment is reversed. A successful appeal offers little consolation and is moot because in most instances the punishment has been imposed in whole or in part.

The Rules in Article 10 are stacked against the attorney because the Supreme Court of Texas not only makes the Rules, it enforces them and then hears or refuses to hear appeals based thereon. Petitioner requested a jury trial because at that time, he believed the State Bar would follow the rules and that the law of the land would be followed throughout. Petitioner filed a Plea in Abatement because the stale complaints were 6 to 7 years old; however, the State Bar amended its Petition to include a fourth complaint alleged to have occurred on February 12, 1983, but which was filed on August 22, 1985 by the law partner of one of Petitioner's opposing counsel in Bankruptcy Court. Disciplinary Rules require that all complaints be quickly processed and notice of "just cause" be given to the accused attorney.

The "El Azteca matter" is the complaint that broke the camel's back because Article 10, Section 16(J) clearly states that an attorney shall not be reprimanded, suspended or disbarred unless the complaint was reported to the General Counsel Office within four years of its occurrence. The Chairman of the Grievance Committee for District 10 and the General Counsel testified under oath that they could not say when the matter was reported to the General Counsel's office (See Appendix VIII, Statement of Fact, p 26-29).

After a 3 day trial the Jury found Petitioner guilty of only three of the four counts. The judgment (Appendix I) assessed one year suspension without apportionment thereof between the three counts. The Appeals Court reversed the trial court on one other count. Leaving two counts subject to the same punishment (Appendix II). The dissenting opinion correctly states established law which requires that the judgment be remanded to the trial court for a record reassessment of the punishment, if any, by the trial court.

Petitioner, filed his Motion To Reconsider and included the Affidavit of Brewton's ex-wife, as newly discovered evidence, that this complainant had committed perjury and

lied to the jury. Whether the State Bar knew this before the trial, cannot be determined unless the case is remanded for a new trial. In addition, on the fourth and last count of professional misconduct, the Petitioner also included, as basis that the state court lacked jurisdiction, a letter by a Federal Bankruptcy Judge stating that the El Azteca matter had already been concluded in 1986 and that he did not find professional misconduct.

The Motion for Rehearing, Brief for Petitioner and Response to Respondent's Reply on Application for Writ of Error (Appendix III) sufficiently preserved the constitutional errors, Brinkerhoff-Faris v Hill, 281 U.S. 673 (1930), which are asserted to be denial of due process and equal protection of the law. After the Supreme Court refused the Writ Of Error and as final recourse in the state system Petitioner sought a Writ Of Mandamus to remove the void judgment. Because the judgment is in fact void, as a matter law, Petitioner submits that limitations do not run against his right to have this Honorable court mandate its removal, through the granting of this petition.

REASONS FOR GRANTING THE WRIT

I. Due process and equal protection of the law entitle Petitioner to the relief which the dissenting opinion of Chief Justice Cadena propounds.

By refusing to remand the void judgment to the trial, the Court of Appeals and the Supreme Court of Texas deprived Petitioner his constitutional guarantees.

II. By seeking and accepting a law license attorneys do not give up rights under both the United States and Texas Constitutions.

In Levine v. State Bar of Wisconsin, 864 F2d 457, (7 Oct.,

1988) and in the Lathrop v. Donohue, 367 U.S. 820 (1961) the integrated bar was held to be a proper system for governing attorney conduct. Those cases originated in Wisconsin, a state where the constitution was recently amended to permit such an arrangement. The Texas Constitution has no such graft. Even if it did, the same would still be irreconcilable with the federal constitution! The Texas Constitution does not place the State Bar, or any other organization under the absolute control of the judiciary. Art. II, Sec. 1, divides the sovereign powers between the legislature, the executive and the judiciary. After numerous failed attempts the Texas Legislature adopted the State Bar Act in 1939. Convolutd therein is an unconstitutional delegation of legislative power to promulgate rules affecting rights otherwise guaranteed by both constitutions — state and federal. Petitioner does not challenge the court's authority to establish procedural rules.

III. When an accused attorney has no effective right of appeal — he has no rights under the law.

In this case, Petitioner is alleging that the Fourth Court of Appeals has committed "fundamental error" in that the Article 10, Section 16(J) clearly states that the General Counsel is to receive the notice of the complainant, not the "counsel for the local grievance committee" as stated in its opinion because under the new rules, discussed by Jerry Zunker, this was one of the main reasons for the latter — "to centralize the power with the General Counsel and not with the local grievance committee."

More important, the new rules require that notice of "just cause" be given to the accused attorney, not merely notice that a complaint has been filed. Jerry Zunker covers this point when he says that at a "just cause" hearing, the accused has an opportunity to present his witnesses also before the full committee. The Fourth Court of Appeals and the Supreme Court failed to clarify these rules. The presence of the accused attorney is mandatory unless once

subpoenaed, he fails to appear. Obviously, if he is not subpoenaed or is without notice of the hearing, he cannot be charged with failure to appear.

IV. Everyone involved in the disciplinary process should follow and obey the same set of Rules.

It is obvious from the record that that State Bar of Texas does not follow the rules, neither do The Court of Appeals, nor the Supreme Court of Texas. An attorney is subjected to the disciplinary rules, which the prosecutor, State Bar of Texas, does not have to follow, or which are whimsically applied.

V. The Supreme Court of Texas cannot be delegated legislative power in violation of the separation of powers provision of both the Texas and United States Constitution.

The legislature delegated to the Supreme Court of Texas authority to make rules governing attorney conduct. It did not do so in the manner required by Mistretta v. U.S., 109 S Ct. 647 (1989).

VI. Article IV, Section 5(3) of the State Bar Rules is over-reaching and oppressive, in a constitutional sense.

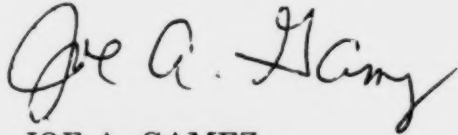
Article IV, Section 5(3), states that no person may serve as an officer or director of the State Bar of Texas who has ever been suspended or disbarred from the practice of law. Such punishment is in derogation of the state and federal constitutions.

This Petitioner requests that this Court grant the Writ of Certiorari in the interest of justice and fair play because he has been denied due process and equal protection of the law and because the Texas State Bar Act is unconstitutional.

CONCLUSION

Based on the foregoing reasons, a Writ of Certiorari should issue to review the judgment of the court of Appeals for the fourth Supreme Judicial District at San Antonio, Texas, to which court the record has been returned by the Supreme Court of Texas.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe A. Gamez". The signature is fluid and cursive, with the first name "Joe" and last name "Gamez" being clearly legible, and "A." as a middle initial.

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Texas Bar No. 07607200

APPENDIX

No. 86-CI-07087

The State Bar of Texas

In The District Court Of

V.

Harris County, Texas

Joe A. Gamez

57th Judicial District

JUDGMENT

On the 11th day of April, 1988, the above-entitled and numbered cause was called for trial. The Petitioner appeared by and through its attorney of record, and the Respondent appeared in person and by his attorney. The parties announced ready for trial, and a jury having been demanded, was thereafter selected and duly sworn and said cause proceeded to trial.

On the 13th day of April, 1988, the jury through its foreman, announced in open court that a verdict had been reached. Whereupon, the Court received the jury's verdict, which is incorporated herein by reference and made a-part hereof for all purposes.

The Court, based upon the jury's verdict and the law applicable thereto, is of the opinion and so finds that the acts and conduct on the part of the Respondent, as found by the jury in answers to:

Question No. 1(A) (FARRIS DIVORCE)) constitute a violation of Disciplinary Rule 1-102(A)(5);

Question No. 1(B) (EL AZTECA BANKRUPTCY CASE) constitute a violation of Disciplinary Rule 1-102(A)(5);

Question No. 2(B) (EL AZTECA BANKRUPTCY) constitute a violation of Disciplinary Rule 6-101(A)(3);

Question 3(B) (DAVID BREWTON, JR. DIVORCE) constitute a violation of Disciplinary Rule 7-101(A);

Question No. 4(A) (BREWTON DIVORCE) constitute a violation of Disciplinary Rule 1-102(A)(4);

Question No. 5(A) (DAVID BREWTON, JR.) constitute a violation of Disciplinary Rule 1-102(A)(6);

Question No. 5(C) (EL AZTECA BANKRUPTCY) constitute a violation of Disciplinary Rule 1-102(A)(6);

Question No. 7(A) (EL AZTECA BANKRUPTCY) constitute a violation of Disciplinary Rule 1-102(A)(1);

Question No. 7(C) (EL AZTECA BANKRUPTCY) constitute a violation of Disciplinary Rule 6-101(A)(2);

Question No. 7(D) (EL AZTECA BANKRUPTCY) constitute a violation of Disciplinary Rule 7-102(A)(7);

and

Question No. 7(E) (EL AZTECA BANKRUPTCY) constitute a violation of Disciplinary Rule 7-102(A)(8).

The Court further finds, as to each of such violations, the Respondent guilty of professional misconduct as defined in Article X, Section 7 of the State Bar Rules.

The Petitioner and the Respondent then proceeded to offer arguments to the Court bearing on the measure of appropriate discipline.

The Court concludes and is of the opinion and so finds that the proper discipline of the Respondent for each occurrence of professional misconduct is suspension from the practice of law, but that a portion thereof be probated.

It is, accordingly, ORDERED, ADJUDGED, and DECREED that the Respondent, JOE A. GAMEZ, be suspended from the practice of law in Texas for a period of one (1) year, beginning on April 15, 1988, and ending on April 14, 1989.

It is further ORDERED that from April 15, 1988, until July 14, 1988, and from October 15, 1988, until April 14, 1989, Respondent, JOE A. GAMEZ, shall be on probation subject to the following terms and conditions:

1) that Respondent, during said period of probation, not violate any law of the United States or the State of Texas,

or any other state other than minor traffic violations;

2) that Respondent, during said probation, not violate any provisions of the Code of Professional Responsibility nor any provision of the State Bar Rules;

3) that Respondent inform the Membership Department of the State Bar of Texas of any changes of his mailing address; and

4) that Respondent shall cooperate with every inquiry of any grievance committee of the State Bar of Texas.

It is further ORDERED that upon determination by the Court that Respondent has engaged in professional misconduct during the term of the probation or violated any other condition of probation, the Court shall enter an Order revoking the probation and imposing a suspension for a period of one (1) year, less any suspension already served, commencing on the day of revocation, upon the following terms:

1) Petitioner may apply to the Court for revocation of probation by filing a written motion to revoke and serving a copy of the same on Respondent by certified mail, return receipt requested at the address then shown in the records of the Membership Department of the State Bar of Texas or such other address as shall be made known to Petitioner; and

2) the Court shall hear the motion to revoke in accordance with the Texas Rules of Civil Procedure and Evidence within forty-five (45) days of its filing, without the aid of a jury, and shall determine by a preponderance of the evidence whether Respondent has engaged in professional misconduct or violated a term of his probation.

It is further ORDERED, ADJUDGED and DECREED that Respondent, JOE A. GAMEZ, during said suspension is hereby enjoined from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any court in any

Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further ORDERED that, in accordance with Article X, Section 32, State Bar Rules, Respondent immediately notify each of his current clients in writing of this suspension and return all files, papers, monies and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Said Respondent is ordered to file with this Court within (30) days of the date of this Judgment an affidavit stating that all current clients have been notified of the Respondent's suspension and that all files, papers, monies and other property belonging to all clients and former clients have been returned as ordered herein. Respondent shall forward a copy of said affidavit to the Office of General Counsel, State Bar of Texas.

It is further ORDERED that the said JOE A. GAMEZ, surrender his Texas law license and permanent State Bar Card to the Clerk of the Supreme Court of Texas for the period beginning July 15, 1988, through October 14, 1988.

It is further ORDERED that the Clerk of this Court shall forward a certified copy of the Second Amended Disciplinary Petition on file herein, along with a certified copy of this Judgment to each the Clerk of the Supreme Court of Texas, Supreme Court Building, Austin, Texas 78711, and to the General Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further ORDERED that all costs of court herein incurred shall be taxed against the Respondent, JOE A. GAMEZ, for which the Clerk may have his execution if they are not timely paid.

Signed this 15 day of April, 1988.

JAMES F. CLAWSON, R., Judge Presiding

Court of Appeals
Fourth Supreme Judicial District of Texas
San Antonio

OPINION

Appeal No. 04-88-00367-CV

Joe A. GAMEZ,
Appellant

v.

THE STATE BAR OF TEXAS,
Appellee

Appeal from the 57th District Court of Bexar County
Trial Court No. 86-CI-07087
Honorable James F. Clawson (Retired), Judge Presiding

Opinion by: Shirley W. Butts, Associate Justice
Dissenting Opinion by: Carlos C. Cadena, Chief Justice
Concurring Opinion by: Blair Reeves, Associate Justice

Sitting: Carlos C. Cadena, Chief Justice
Shirley W. Butts, Associate Justice
Blair Reeves, Associate Justice

Delivered and filed: December 28, 1983

AFFIRMED, AS REFORMED.

This is an appeal from a disciplinary proceeding brought by appellant Joe A. Gamez, an attorney, against appellee, the State Bar of Texas. TEX. GOV'T CODE ANN., T.2, Subt. G. App. A, STATE BAR RULES, arts. I-XII (Vernon 1988); **see specifically** art. X. Trial by jury was had on charges of professional misconduct stemming from representation by Gamez of clients in four separate matters, however, the jury answered favorably to Gamez in one case. The three before

this Court are: (1) the divorce of Lillian Farris (formerly Lillian De La Guerra), (2) the divorce of David Reece Brewton, Jr., (3) the bankruptcy of El Azteca Mexican Food Restaurant, Inc. Based upon the jury's verdict, the trial court found that the acts and conduct of Gamez constituted eleven separate violations of Disciplinary Rules. SUPREME COURT OF TEXAS, STATE BAR RULES, art. X, § 9 (Code of Professional Responsibility) (1988). One of these violations was found in the Farris matter, three in the Brewton matter, and seven in the El Azteca matter. The trial court found the proper discipline for the occurrences of professional misconduct to be suspension for one year from the practice of law, but that a portion of the suspension be probated (with conditions). Appellant brings four points of error.

THE FARRIS DIVORCE

The husband, Karl L. De La Guerra, was petitioner in a divorce action against Lillian, his wife. She was first represented by an attorney who withdrew; then she employed appellant, Joe A. Gamez, attorney, to represent her in the contested action. Tanya McNaughton, attorney, represented the husband. The parties and attorneys conferred at the courthouse on April 1, 1981, reaching an agreement. The agreement was filed in the record to preserve its terms. McNaughton prepared the divorce judgment, and she and her client, the husband petitioner, signed the agreed judgment. McNaughton delivered the judgment to Gamez' office; Lillian signed it that afternoon, making several copies at that time. Gamez' secretary, who is his wife, took the document home that evening and Gamez signed it. The secretary delivered it to McNaughton's office the next day, according to her testimony.

McNaughton testified that she never saw the divorce judgment. She stated that a secretary at her office may have seen it. She stated that shortly after the Farris divorce she closed her law office and took an extended trip to Europe and the Middle East. She never followed up on the divorce decree

to see whether it was filed. She stated it was her understanding that Gamez was to enter the divorce judgment.

About two years later Lillian (now remarried) requested a certified copy of the judgment from the district clerk and discovered it had never been signed by the judge and entered of record. She notified the office of Gamez.

From his copy of the earlier judgment in his file, Gamez drew up a new, but identical, judgment. He approved it, and a lawyer associated with McNaughton (who was on vacation) approved it for her. The trial judge signed it and it was filed of record on August 12, 1983. Farris brought the grievance.

Three questions were answered by the jury regarding the Farris grievance in the trial de novo. The jury failed to find that Gamez willfully or intentionally neglected the legal matter that was entrusted to him. The jury failed to find that Gamez intentionally failed to seek the lawful objectives of his client, or to carry out the contract of employment entered into for professional services, or that Gamez prejudiced or damaged Farris during the course of the professional relationship without good cause. In the only other question, Question 1(A), submitted to the jury on the Farris divorce action, it found that Gamez engaged in conduct that was prejudicial to the Courts, to the State Bar of Texas or the complainant.

Since the jury found specifically in another question there was no prejudice to Farris, the State Bar must show the prejudice to be to the Courts or the State Bar of Texas. The judgment in this disciplinary proceeding indicates that the finding reflects a violation of Disciplinary Rule 1-102(A)(5): "A lawyer shall not ... engage in conduct that is prejudicial to the administration of justice."¹

The first point of error is that the evidence is both legally and factually insufficient to support the jury's verdict in the

¹ CODE OF PROFESSIONAL RESPONSIBILITY, art. X, § 9 DR 1-102(A)(5).

Farris matter.² In deciding a “no evidence” point the reviewing court will view the evidence in the most favorable light in support of the verdict, considering only the evidence and inferences which support the verdict and rejecting the evidence and inferences which are contrary to the verdict. The point of error must be sustained if there is a complete absence of, or no more than a scintilla of, evidence to support the verdict. **Freeman v. Texas Compensation Insurance Co.**, 603 S.W.2d 186, 191 (Tex. 1980). We sustain the “no evidence” point.

This court is required to determine the “no evidence” point first, and if that point is sustained, the disposition of the case must reflect that decision even though a factually insufficient point is also sustained. See Calvert, “No Evidence” and “Insufficient Evidence” Points of Error, 38 Tex. L. Rev. 361 (1960).

In reviewing factually insufficient evidence points, we examine all the evidence to determine whether the finding is so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust. See **In re King’s Estate**, 150 Tex. 662, 244 S.W.2d 660, 661-62 (1951). This point is also sustained.

We agree with appellant that it is the usual custom for the petitioner’s attorney, under the circumstances presented in this divorce case, to assume the responsibility of obtaining the trial judge’s signature and filing the agreed judgment. It is not ordinarily an affirmative duty imposed on the attorney for respondent. However, as soon as Gamez learned of the omission, an affirmative **duty** arose to cause the judgment to be filed. He did immediately cause the judgment to be entered. Compare **State Bar v. O’Dowd**, 553 S.W.2d

² To bring separate points of error as to legally and factually insufficient evidence is better practice. The predicates at trial, and arguments and authorities on appeal are different.

822, 824 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ ref'd n.r.e.) (determining that a lawyer's failure to appear at a contempt hearing after a continuance had earlier been obtained, was not such professional misconduct as to be prejudicial to the administration of justice). We cannot say it has been shown that the failure of Gamez to act until after he learned that the judgment had not been signed and entered was such professional misconduct as to be prejudicial to the administration of justice. **Compare Howell v. State**, 559 S.W.2d 432 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.). We find that the evidence is legally and factually insufficient to support the answer to Question 1(A). Accordingly, the trial court's finding as a matter of law that DR-1-102(A)(5) had been violated cannot stand. That portion of the judgment will be reformed to delete that finding.

THE BREWTON DIVORCE

In his second point of error Gamez maintains the evidence to support the verdict on the Brewton divorce is legally and factually insufficient.

Brewton employed Gamez as his attorney to file a divorce action against his wife, who employed Jerry P. Heltzel as her attorney. The divorce was heard in August 1980. In evidence is a copy of a letter sent to Brewton on December 31, 1980. It recites that "enclosed herein please find a copy of your divorce decree in reference to the above captioned cause." The copy of the decree is a conformed one reflecting that attorneys for both parties signed it, as well as the judge, and further, that it was signed and entered on August 12, 1980.

In evidence there is also a copy of the actual divorce decree that was signed by the judge and entered of record, shown by volume and page numbers of the records. This states that the divorce was heard on August 22, 1980, but was not signed and entered of record until December 21, 1980. The actual signatures of both attorneys appear on the approval lines,

as well as the actual signature of the judge. The judgments differ in the following respects:

The two judgments showed different dates of hearing and different dates of the judge's signature. Child support is to be paid to mother of children directly in the non-official judgment, whereas it is to be paid through the child support office in the official one. The judgments showed different dates for when child support began. The major difference is the court order in the actual judgment that the right to claim income tax exemptions upon the children of the marriage is granted to the respondent (wife) as part of the child support award.

The attorney for the wife testified that she telephoned him regarding entry of the judgment. He checked the court records and determined no judgment was on file, although a divorce had been granted. The attorney said he contacted Gamez and then discussed the issue of tax exemption for the wife since the child support payments were very low, and they agreed to the terms. Brewton never received a copy of the real divorce decree. When Brewton discovered the tax exemption provision in 1983, he filed a grievance against Gamez.

In answer to Question Number 1, the jury failed to find that Gamez engaged in conduct that was prejudicial to the Courts, to the State Bar of Texas or Brewton. The jury did find in answer to Question Number 3, that Gamez intentionally failed to seek the lawful objectives of Brewton, to carry out a contract of employment with Brewton for professional services, or that Gamez prejudiced or damaged Brewton during the course of the professional relationship without good cause. In answer to Question Number 4, the jury found that Gamez engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. The jury further found (Question Number 5) that Gamez engaged in conduct that adversely reflects on his fitness to practice law in his representation of Brewton. Based upon the jury's verdict, the trial court concluded that three violations of the

Disciplinary Rules occurred: DR 7-101(A), DR 1-102(A)(4), and DR 1-102(A)(6).³

The State Bar is correct in its statement that the issue is not whether Brewton was eligible for a tax exemption but rather whether Gamez misrepresented to Brewton what was actually filed in his divorce case and whether Gamez agreed to the judgment terms without obtaining his client's consent and without his knowledge. Brewton testified he had one consultation with Gamez before obtaining the divorce and that the instrument sent him was consistent with what he understood the terms to be. The jury, faced with conflicting testimony, could have determined that act the act of sending the non-official judgment, which reflected what Brewton discussed with Gamez, constituted misrepresentation. The jury could have found that the "conformed" signatures on the unofficial judgment were fraudulent. Moreover, since the tax matter was not discussed nor agreed to by Brewton, and Gamez did not obtain Brewton's approval of the tax exemption order, the jury could have determined there was

³ DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(Footnote Continued)

an intentional failure to seek the lawful objectives of his client, and that Gamez's acts damaged his client. From the evidence presented, Gamez's actions could be found by the jury to have adversely reflected on his fitness to practice law in his representation of Brewton.

Applying the established standards of review, *supra*, we hold that the evidence is both legally and factually sufficient to support the jury's answers in the Brewton grievance. Therefore, the trial court could properly find as a matter of law that violations of DR 1-102(A)(4), DR 1-102(A)(6), and DR 7-101(A) occurred. The second point of error is overruled.

THE EL AZTECA BANKRUPTCY

In his third point of error appellant avers he was not given notice of the grievance hearing on the Azteca bankruptcy complaint and was thereby denied due process of law. Article 10, § 10(C) of the State Bar Rules provides in part:

Investigation. Where a matter has not been rejected after initial evaluation and the grievance committee has not determined otherwise, counsel shall proceed to conduct an investigation. **The respondent shall then be advised promptly that he is the subject of an investigation, be provided a copy of the**

(Footnote Continued)

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

* * *

DR 1-102 Misconduct.

(A) A lawyer shall not:

* * *

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

* * *

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

allegations against him, and be asked to respond in writing with a copy to the complainant. ... Where the grievance committee classifies the matter as a complaint the matter shall then be pursued to disposition ... (emphasis added)

* * *

SUPREME COURT OF TEXAS, STATE BAR RULES, art. X § 10(C) (1988).

The record reflects that Gamez was notified by certified mail, the letter dated October 15, 1985, that a complaint had been filed against him, and a copy of the complaint was attached. This was the Azteca bankruptcy grievance. In evidence is Gamez's written response to the notification. The response is dated December 13, 1985. In addition there appears a letter from the attorney for Gamez, dated March 14, 1986, which indicates a second letter of notice was sent to Gamez. A copy of the same response previously sent to the grievance committee was again forwarded by Gamez.

The record reflects further that a hearing on the Azteca matter was conducted on September 10, 1986. At the instant trial Gamez testified he was present at that hearing. He also said he understood the grievance had been "dropped" after that time. There is no evidence to show the basis for the statement.

The evidence shows that the Farris and Brewton grievances, along with a third one, where the basis for a proposed agreed suspension order submitted to Gamez in July, 1985. It was not accepted.

Article 10, § 10(E) provides in part:

Investigatory Hearing. The chairman of the grievance committee, with or without the request of counsel, **may** order that an investigatory hearing be conducted by the committee but shall order an investigatory hearing at the request of the respondent. The hearing shall be held not sooner than twenty-five (25) days after notice

of hearing to counsel and respondent except by their agreement ... (emphasis added)

* * *

We find that the record, including exhibits admitted at trial and the testimony of Gamez and other witnesses, clearly shows that notice of the Azteca grievance and the hearing was given appellant. The record shows further that Gamez responded in writing and appeared at the hearing. After the initial hearing in September 1986, a subpoena **duces tecum** was issued to Gamez by mailing it to his regular business address. The accompanying certificate states that the subpoena was sent by certified mail; Gamez denied that he received it. Neither he nor his attorney appeared at that October 8th hearing which was before the full committee. Nor was he notified of any grievance committee recommendation.

Before that date the State Bar had filed suit based on the three previous grievances on April 23, 1986. The second amended original petition was filed on March 30, 1988, and it included the Azteca bankruptcy grievance.

We first note the subpoena was to compel production of certain documents by the witness relevant to the Azteca bankruptcy grievance, it was a subpoena **duces tecum**, and was not for the purpose of notice to the appellant of the nature of the grievance against him; that notice had previously been given. Section 14 of article 10 requires the grievance committee to determine appropriate sanctions **or take appropriate action after reasonable notice to the respondent, after giving him an opportunity to respond and conducting a hearing.** SUPREME COURT OF TEXAS, STATE BAR RULES, art. X § 14(A) (1988). That due process requirement was compiled with in the present case.

Section 14(B) of article 10 specifies that the committee shall prepare, if it has reason to believe that the respondent will accept its action as final, a form of judgment of sanctions

it deems proper (not to exceed revocation or suspension of license for a period of more than three years) and submit the proposed judgment of the respondent. *Id.* § 14(B). The rules do not require this action. The committee had done this relative to the previous grievances. Since the committee already had reason to believe any proposal submitted would not be accepted (as with the earlier proposed judgment of sanctions), and since the State Bar had already initiated its suit for disciplinary action, it could properly amend its petition to include the Azteca matter. Under the circumstances of this case, this would be "appropriate action" and disposition of the matter. *Id.* §14(A).

We hold that Gamez had notice that the Azteca grievance had been filed and of the Azteca grievance hearing, and that he was not denied due process for lack of notice. The fact that a subpoena **duces tecum** issued but that Gamez did not appear with the items requested does not vitiate the initial compliance with the notice requirement of the rules.

Within the same point of error Gamez presents another argument. It is that the State Bar failed to comply with the four year statute of limitations period prescribed by article 10, § 16(J), which provides:

Four Year Limitation Rule and Exceptions. No member shall be reprimanded, suspended, or disbarred **for misconduct occurring more than four (4) years prior to the time such allegation is brought to the attention of counsel** except in cases in which disbarment or suspension is compulsory as provided herein. Limitations, however, will not run where fraud or concealment is involved until such misconduct is discovered or should have been discovered by reasonable diligence by counsel. (emphasis added)

Appellant maintains that neither member of the grievance committee testifying in answer to his questions about the subpoena **duces tecum** could state with certainty if or when Gamez received the subpoena **duces tecum**. Gamez denied he received the subpoena, arguing he therefore did not receive

notice as required. Gamez therefore contends the four year statute of limitations applies to bar the action since the State Bar failed in its proof to show when he received notice of the October 8th hearing.

This argument overlooks the actual notice of the grievance which Gamez received on October 23, 1985, according to the record. This was in the form of a letter of notice, dated October 15, 1985, with a copy of the grievance attached. Gamez responded to the grievance complaint and then appeared at a hearing in September, 1986. This fulfills the notice requirement to which State Bar Rules article 10, §§ 10 (C) and (E) speak. Moreover, appellant misconstrues the function of the subpoena rule, art. 10, § 12. The subpoenas which can issue for discovery purposes are directed to **witnesses**; they do not serve as notice of the grievance to the subject member.

The petition in bankruptcy under chapter 11 relative to Azteca was filed in federal court on February 23, 1984. All matters involved in the Azteca grievance arose in 1984 and 1985. The October 15, 1985 notice to Gamez had attached to it a copy of the grievance. It is clear that the alleged misconduct did not occur more than four years before the allegation was brought to the attention of **grievance committee counsel**. It is that **counsel** who must have knowledge of the complaint within four years after the occurrence — not the attorney who is the subject of the grievance. **See Wilson v. State**, 582, S.W.2d 484, 487 (Tex. Civ. App. — Beaumont 1979, no writ). Point of error three is overruled.

Appellant, in point of error four, asserts that the evidence is legally and factually insufficient to support the jury findings regarding the Azteca bankruptcy case on four questions.

The jury affirmatively answered question Number 1(B) that Gamez did engage in conduct that was prejudicial to the Courts, to the State Bar of Texas or to Azteca in his handling

of the bankruptcy case. The jury affirmatively answered Question Number 2(B) that Gamez did willfully or intentionally neglect the legal matter that was entrusted to him in the Azteca bankruptcy. To Question Number 5(C) the jury answered that Gamez engaged in conduct that adversely reflects on his fitness to practice law in his representation of the Azteca bankruptcy. Question Number 7 contained five subdivisions. The jury answered that Gamez violated a disciplinary rule of the State Bar; that he handled a legal matter without preparation adequate in the circumstances; that he counseled or assisted his client in conduct that the lawyer knew to be illegal or fraudulent; and that he knowingly engaged in other illegal conduct or conduct contrary to a disciplinary rule. These were Question Numbers 7(A) (C) (D) and (E).

We agree with appellant's contention that the jury incorrectly passed upon questions of law in subdivisions (A) that Gamez violated a disciplinary rule, and (E) that he knowingly engaged in...conduct contrary to a disciplinary rule. The trial court should not have submitted those two questions as matters of fact for the jury to determine. They are matters of law to be determined by the court. **See Howell v. State**, 559 S.W.2d 432, 434-45 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.). The trial court could have disregarded any issue that constituted a question of law. **Id.** However, there was no objection to the submission of the questions or motion to disregard, and in view of our disposition of the case, the error is harmless.

It was shown that after the bankruptcy petition was filed, Gamez made two substantial payments to creditors; the payments were made from the debtor's estate without authorization of the court. Appellant argues that the order defining his duties was not entered until two days after the payments were made. This does not address the presumption that the attorney in a bankruptcy matter is competent in that law and knows what his duties are according to the

bankruptcy laws. The owner of Azteca testified that the funds turned over to Gamez were corporation funds from a sale, not personal ones; however, he was told by Gamez that they could make the payments to debtors at that time. It could be concluded that by disbursing the funds, Gamez prevented the creditors from knowing about the funds and caused an unfair distribution contrary to bankruptcy laws. Evidence disclosed it was necessary that another lawyer be substituted for Gamez and he attempted to recover the funds wrongfully paid out. Instead of advising his client what his rights, duties, and responsibilities were, Gamez rendered advice and took action that was contrary to bankruptcy laws and without the court's authorization.

The evidence also shows that Gamez failed to file an accounting on the Azteca bankruptcy case as required. An extension of time to file the accounting was granted by the court, but it was the lawyer who replaced Gamez who finally filed the accounting.

Another grievance complaint is that Gamez failed to provide counsel for the unsecured creditors committee with notice of his fee application. When that attorney obtained a copy of the fee application, he opposed the claim. Applying the standard of review set out earlier, we find there was both legally and factually sufficient evidence to support the jury's answers to the fact questions. The fourth point is overruled.

Because we sustained the point of error as to the Farris complaint, we must determine the disposition of the appeal accordingly. The trial court, in its broad discretion, set punishment at one year's suspension, with periods of probation to include all three cases. **We have no way of knowing the weight to be given the findings in each case.** (emphasis added) In reviewing the evidence upon which the court based its punishment, we find that the imposition by the trial court of a one year suspension from the practice of law, with probated periods, on these two cases (Brewton and Azteca) would not be an abuse of discretion.

The judgment is reversed and rendered as to the Farris divorce case. Accordingly the finding by the trial court in the Farris divorce case that appellant violated DR-1-102(A)(5) is deleted. As reformed, the judgment is affirmed.

SHIRLEY W. BUTTS,
Associate Justice

PUBLISH.

DISSENTING OPINION
Appeal No. 04-88-00367-CV

Joe A. GAMEZ,
Appellant

v.

THE STATE BAR OF TEXAS,
Appellee

Appeal from the 57th District Court of Bexar County
Trial Court No. 86-CI-07087

Honorable James F. Clawson (Retired), Judge Presiding

Opinion by: Shirley W. Butts, Associate Justice
Dissenting Opinion by: Carlos C. Cadena, Chief Justice
Concurring Opinion by: Blair Reeves, Associate Justice

Sitting: Carlos C. Cadena, Chief Justice
Shirley W. Butts, Associate Justice
Blair Reeves, Associate Justice

Delivered and filed: December 28, 1988

If, as Justice Butts holds, there is evidence to support the finding of improper conduct by appellant in only two of the three cases relied on by the State Bar, I see no basis for affirming a judgment which imposes sanctions based on the premise that the State Bar proved all of the violations assessed in its pleadings. It may be conceded that a trial judge

has a wide discretion in determining the sanctions to be imposed on an attorney who has violated the disciplinary rules and that, in the exercise of such discretion, the court may assess one punishment for the violation of several rules or a separate sanction for the violation of each rule. **State v. Baker**, 539 S.W.2d 367, 375 (Tex. Civ. App. — Austin 1976, writ ref'd n.r.e.). Nor would I challenge the view that the trial court, "in good faith and using its best considered judgment, fit the punishment to the offenses before it..." **State v. Baker**, 559 S.W.2d 145, 147 (Tex. Civ. App. — Austin 1977, writ ref'd n.r.e.). But in this case the trial court fixed the punishment to fit what it mistakenly believed were three offenses when, in fact, the evidence showed only two violations. I have difficulty characterizing as "sound" an exercise of discretion based on facts which do not exist. I cannot accept the notion that the trial court is vested with a discretion so broad that it can impose sanctions based on the commission of three violations when the record conclusively establishes that only two violations have occurred.

The first opinion in **State v. Baker**, *supra*, supports the conclusion that the judgment in this case should be reversed and the cause remanded to the trial court to consider, in its discretion, the sanctions to be imposed on appellant for two violations rather than three. In that case the Austin Court concluded that the trial court erroneously imposed sanctions in the belief that there were fewer violations than those found by the appellate court. The appellate court, while voicing the traditional statements concerning the trial court's discretion, remanded the case so that the sanctions imposed would correspond to the true facts. 539 S.W.2d at 375. Cf. **Ex parte Lee**, 704 S.W.2d 15, 17 (Tex. 1986).

CARLOS C. CADENA,
Chief Justice

PUBLISH.

CONCURRING OPINION

Appeal No. 04-88-00367-CV

Joe A. GAMEZ,
Appellant

v.

THE STATE BAR OF TEXAS,
Appellee

Appeal from the 57th District Court of Bexar County
Trial Court No. 86-CI-07087
Honorable James F. Clawson (Retired), Judge Presiding

Opinion by: Shirley W. Butts, Associate Justice
Dissenting Opinion by: Carlos C. Cadena, Chief Justice
Concurring Opinion by: Blair Reeves, Associate Justice

Sitting: Carlos C. Cadena, Chief Justice
Shirley W. Butts, Associate Justice
Blair Reeves, Associate Justice

Delivered and filed: December 28, 1988

I concur in the result. However, I do not agree that the failure of Gamez to follow up on the entry of the divorce decree in the Farris divorce was not prejudicial to the Courts or the State Bar of Texas. Because it is custom in Bexar County for the prevailing party to enter the judgment does not relieve opposing counsel from the responsibility of verifying the entry of the judgment. It is also common practice among the attorneys of this Bar to require the attorney entering the judgment to advise the other attorney the date of entry of the judgment, thereby assuring the entry of a final judgment before closing the file. The proof of that statement is the consequences that occurred in this case. Mrs. Farris, relying on her attorney that the divorce was finalized,

remarried. Two years later, to her dismay, she finds there is no written documentation of her divorce. There is, in my opinion, sufficient evidence to find Gamez's conduct prejudicial to the administration of justice.

PUBLISH.

BLAIR REEVES,
Associate Justice

Court of Appeals
Fourth Supreme Judicial District of Texas
San Antonio

JUDGMENT
Appeal No. 04-88-00367-CV

Joe A. GAMEZ,
Appellant

v.

THE STATE BAR OF TEXAS,
Appellee

Appeal from the 57th District Court of Bexar County
Trial Court No. 86-CI-07087
Honorable James F. Clawson (Retired), Judge Presiding

JUDGMENT

After hearing this cause and examining the record, the Court finds that the court below committed reversible error. It is therefore ORDERED that the judgment of the court below be AFFIRMED as REFORMED in accordance with the opinion of this Court delivered this date.

It is further ORDERED that Appellant, JOE A. GAMEZ, pay all costs of appeal and this decision be certified to the trial court.

Entered this 28th day of December, 1988.

Part of Motion For Rehearing, Brief For Petitioner and Response to Respondent's Reply on Application for Writ of Error in Supreme Court of Texas, C-8509, Points of Error No. one and two (p. 3-6)

matter, and notwithstanding Respondent's contrariness it did reverse the trial court on that charge. A collateral issue is that thereafter the reviewing Court lacked authority to reform the trial court's judgment. Respondent's posture is that the authority therefore is absolute. Moreover, it confuses trial court error with that of the Appellate Court, whose authority to reform, whether explicate or by implication, hinges on the language of the judgment.

C. Points of Error 1 and 2 address the error of the Court of Appeals. They are combined under one heading.

III.

POINT OF ERROR NUMBER ONE
(Points of Error One and Two In
Application for Writ of Error)

RESTATED, ARGUMENT AND AUTHORITIES

THE COURT OF APPEALS ERRED
FUNDAMENTALLY IN FAILING TO REVERSE
AND REMAND THE JUDGMENT OF THE COURT
BELOW AFTER IT FOUND SAID COURT TO HAVE
COMMITTED REVERSIBLE ERROR WITH
RESPECT TO 1 OF 3 OCCURRENCES OF
MISCONDUCT WHERE THE JUDGMENT DOES
NOT ALLOCATE THE PORTION OF SUSPENSION
TERM CORRESPONDING TO THE REVERSED
OCCURRENCE OF ALLEGED MISCONDUCT AS
ARTICLE 10, SECTION 23, STATE BAR RULES,
REQUIRES. FAILURE TO REMAND IS A DENIAL
OF DUE PROCESS.

A. In its attempt to confuse, Respondent reads what the trial court judgment does not recite (T.167), quoting the relevant portion in the Court's **conclusion**, to wit:

"The Court concludes and is of the opinion and so finds that the proper discipline of the Respondent for **each occurrence of professional misconduct is suspension** from the practice of law, but that a portion thereof be probated." (emphasis by Respondent)

Respondent deludes itself and would have this Court not only convert the adjective "each" in the quoted paragraph to a noun, but it would also have cited paragraph interpreted as calling for each occurrence to deserve a suspension of one year, when "year" is not even contained in the paragraph. The word "year" first appears in the second, obviously disjunct **order**, to-wit:

"It is, accordingly ORDERED, ADJUDGED, and DECREED that the Respondent, JOE A. GAMEZ, be suspended from the practice of law in Texas **for a period of one (1) year**, beginning on April 15, 1988, and ending on April 14, 1989." (emphasis by Respondent)

Just as evident is the absence of the word "each" from this paragraph. Although it is undisputed that the quoted language directs suspension for each of the occurrences of misconduct, nowhere do the cited portions state either:

- a) the number of occurrences; nor
- b) the suspension time corresponding to each occurrence.

The number of occurrences can be determined from within the four (4) corners of the decree; the suspension time corresponding to each occurrence can not. That factor remains in the mind of the trial court; not on the face of the judgment. The absence of such recitals inhibits the authority of the

Court of Appeals to reform the judgment, and its attempts to do so is reversible error. **SMITH V. STATE**, 490 S.W.2d 902 (Corpus Christi CCA ... 1972). **EX PARTE JOEL DAVILA**, 718 S.W.2d 281 (TEX. 1986), citing **EX PARTE LEE**, 704 S.W.2d 15, (Tex. 1986) and quoting the specific settled law, to-wit:

“If one punishment is assessed for multiple acts of contempt, and one of those acts is not punishable by contempt, the entire judgment is void.”

Petitioner was assessed one punishment (a period of one year) for multiple acts (3). One of those acts (De La Guerra divorce) was found not to be punishable. The error of the Court of Appeals is fundamental because after rendering the judgment void, it failed to remand to the trial court for reassessment of the punishment. This Court is authorized to review fundamental error, irrespective of assignment, **McCAULEY v. CONSOLIDATED UNDERWRITERS**, 304 S.W.2d 265 (Tex. ... 1957). See, J. Cadena's dissenting opinion, citing **STATE v. BAKER**, 559 S.W.2d 145 (Austin, CCA ... 1977). Also, **EX PARTE OEBEL**, 635 S.W.2d 454 (SAT CA ... 1982), **EX PARTE CARPENTER** 566 S.W.2d 123 (Hous.-14 1978 no writ), **EX PARTE STANFORD**, 557 S.W.2d 346 (Hous.-1 ... 1977, no writ), **EX PARTE WERNER**, 496 S.W.2d 121 (SAT CA ... 1973, no writ). Prior to December 28, 1988 the judgment was voidable; the appellate opinion of that date has made it void as a matter of law and Petitioner is entitled to have it ordered removed without necessity of original proceedings.

B. It should be noted that the majority opinion admits the very point which Petitioner urges, to-wit:

“We have no way of knowing the weight to be given the findings in each case”. (opinion, page 18) **SMITH v. STATE**, supra.

C. Article 10, Section 23, State Bar Rules, specifically requires that:

“...the Court shall fix the term of suspension not to exceed three (3) years for each separate act of misconduct...”

The judgment (T.167) is in clear violation thereof. The case at bar is important to the profession because a diligent search has failed to find any staere decisis on the issue after enactment of Art. 10, Sec. 23 which apparently gave effect to the advise of the Appellate Court in **GALINDO v. STATE**, 535 S.W.2d 923 @ 931 (Corpus Christi CCA ... 1976).

IV.

POINT OF ERROR NUMBER TWO RESTATED, ARGUMENT AND AUTHORITIES

THE ERROR WITH RESPECT TO “EL AZTECA” BANKRUPTCY IS MULTIFARIOUS. THE FUNDAMENTAL ISSUE OF LACK OF JURISDICTION, LIMITATIONS AND DUE PROCESS WERE PROPERLY BEFORE THE APPELLATE COURT. IT ERRED BY FAILING TO GIVE FULL FAITH AND CREDIT TO THE ORDER OF THE BANKRUPTCY COURT WHICH HAD PREVIOUSLY DISPOSED OF THE SUBJECT MATTER OVER WHICH THE STATE DISTRICT COURT’S JURISDICTION WAS FRAUDULENTLY INVOKED. BY FAILING TO REMAND, IT DENIED PETITIONER DUE PROCESS. IT ALSO ERRED IN ITS REVIEW OF LIMITATIONS UNDER ART. 10, SECTION (16) J (STATE BAR RULES). THE ERROR INVOLVES QUESTIONS OF LAW.

A. The lack of jurisdiction is fundamental error which can

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

December 14, 1988

Mr. Joe A. Gamez
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333 Bandera Road
San Antonio, TX 78228

Mr. Steven D. Peterson
Office of the General Counsel
State Bar of Texas
P.O. Box 12487
Austin, TX 78711

Ms. Linda A. Acevedo
Assistant General Counsel
State Bar of Texas
P.O. Box 12487
Austin, TX 78711

RE: Case No. C-8146

STYLE: JOE A. GAMEZ
v. THE HONORABLE CARLOS C. CADENA, CHIEF
JUSTICE, FOURTH COURT OF APPEALS

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for leave to file petition for writ of mandamus in the

above styled case. Relator's request for ancillary relief is also overruled.

Respectfully yours,
Mary M. Wakefield, Clerk
by Peggy Littlefield
Peggy Littlefield, Chief Deputy

cc.

The Hon. Carlos Cadena
Chief Justice, Fourth Court of Appeals
500 Bexar County Courthouse
San Antonio, TX 78204

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

June 21, 1989

Mr. Joe A. Gamez
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Mr. Steven D. Peterson
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State Bar of Texas
P.O. Box 12487
Austin, TX 78711

RE: Case No. C-8509

STYLE: JOE A. GAMEZ
v. STATE BAR OF TEXAS

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, Writ Denied.

Respectfully yours,
John T. Adams, Clerk
by Blanca E. Morin, Deputy

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

September 13, 1989

Mr. Joe A. Gamez
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San Antonio, TX 78228

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State Bar of Texas
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Austin, TX 78711

Mr. Steven D. Peterson
Office of the General Counsel
State Bar of Texas
P.O. Box 12487
Austin, TX 78711

RE: Case No. C-8509

STYLE: JOE A. GAMEZ
v. STATE BAR OF TEXAS

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case. Motion to allow co-counsel is granted.

Respectfully yours,
John T. Adams, Clerk
by Michael C. Murphey, Deputy

A-31

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

October 18, 1989

Mr. Joe Angel Gamez
333 Bandera Road
San Antonio, TX 78228

Joe L. Hernandez
732 Culebra
San Antonio, TX 78201

Mr. John M. Pinckney, III
800 One Alamo Ctr., 106 S. St. Mary's St.
San Antonio, TX 78205

Ms. Judy Ponder
P.O. Box 12548, Capitol Station
Austin, TX 78711

RE: Case No. C-9077

STYLE: JOE A. GAMEZ
v. THE FOURTH COURT OF APPEALS ET AL.

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for leave to file petition for writ of mandamus in the above styled case. Request for ancillary relief and m/l/f motion

for extraordinary relief is overruled. Motion for consolidation of cases is also overruled.

Respectfully yours,
John T. Adams, Clerk
By Blanca E. Morin, Deputy

cc.

The Hon. Carlos Cadena
Chief Justice, Fourth Court of Appeals
500 Bexar County Courthouse
San Antonio, TX 78204

Mr. Herb Schaefer, Clerk
Fourth Supreme Judicial District
500 Bexar County Courthouse
Main & Market Streets
San Antonio, TX 78202

The Honorable J.F. Clawson, Judge
P.O. Box 747
100 South Main, 203A
Belton, TX 76513

**Excerpt from Statement of Facts, Vol. 1 of 4, Cause 86
CI 07087 (Direct Examination of Mr. Frimel, State Bar
Counsel, by Mr. Torres)**

transcript of the Committee's hearing in that file dated November the 28th, 1984. I assume — and it's only an assumption — that the Committee voted after that hearing.

Q So certainly, then, it was after November, 1984, that the substance that we are here on today involving the Brewton complaint was sent to your office, is that right?

A It would have had to have been after that date.

Q Okay. And the date that the action was taken on the first complaint would have been what date, the same day?

A Again, without a copy of the minutes I can't be sure, but there is a transcript in the Farris file from the Committee's hearing of October the 19th of 1983.

Q So certainly the compliant got to your office after October 19, 1983, is that right?

A It would have had to.

Q And as to the matter involving El Azteca Restaurant, Inc., what is the date on which the Committee took action, affirmative action, involving disciplinary action to be taken against Joe Gamez?

A November the 5th, 1986.

Q And when did you notify — Your petition in that case says that Joe Gamez was retained on February, 1984, is that right?

A I believe that's correct.

Q And when does your file reflect, then, that Joe Gamez was notified, if he was, that disciplinary action was going to be taken against him; that is, that the Committee had voted affirmatively to take disciplinary action against him on the El Azteca Restaurant complaint?

A My file doesn't indicate when he was notified.

Q In other words, you have no record of any kind of a notification?

A I personally, of my own knowledge, do not have a record that he was notified.

Q Okay. So, in other words, then, your file — you have a committee file of the Grievance Committee which is without any indication that Joe Gamez was so notified there was to be disciplinary action taken against him, is that right?

A I don't know whether I have a complete file of the Grievance Committee's file.

Q Well, you are the custodian of the Grievance Committee's file, are you not?

A I don't believe I am the custodian. I am the attorney of record.

Q Well, as the attorney of record you have the complete file, do you not?

A So far as I know it's a complete file.

Q All right. Yet in the Farris and the Brewton complaints, in both of those situations, the Pena situation, you have a letter to Mr. Gamez indicating that the Committee had taken affirmative actions, is that right?

A I don't know that I do.

Q Let me ask you, if I may, —

MR. TORRES: Kindly mark this.
(WHEREUPON, Defendant's
(Exhibit No. 4 was marked for
(identification.

BY MR. TORRES:

Q I want to show you what's been marked for purposes of this hearing as Defendant's Exhibit No. 4 and ask you if you recognize that letter or if you can identify it. Can you identify it?

A I am not sure. I — I have seen so many notice letters.

Q Do you have a letter like that in your file?

A I might. I just don't know.

- Q Let me ask you this: What does that letter purport to be, in your experience as a lawyer for the State Bar of Texas?
- A It purports to be a letter notifying Joe Gamez dated July the 17th, 1985, that the Committee was offering to settle the Farris, Pena and Brewton complaints with a three-year suspension of his law license.
- Q Does it tell Joe Gamez that the Committee voted affirmatively on his complaint — on the complaints against him?
- A It says the Committee was voted to find just cause.
- Q Okay. Which means that is an affirmative finding by the Committee, right?
- A I guess.

MR. TORRES: I pass the witness. I have no further questions of this witness.

May I have that?

I'd call Mr. Sol Casseb, III.

SOL CASSEB, III,

called as a witness on behalf of the Defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TORRES:

Q Kindly tell the jury (sic) your name, Mr. Casseb.

A Sol Casseb, III.